

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAMAR M. HAUPT and : NO. 02-2717
 CAROL M. HAUPT, :
 Plaintiffs :
 vs. :
 THE GOODYEAR TIRE & RUBBER
 COMPANY, :
 Defendant :

COPY

VIDEOTAPE DEPOSITION OF ROBERT W. MAUTHE, M.D.

Taken in the offices of Robert W. Mauthe, M.D., 127 South Fifth Street, Suite 210, Quakertown, Pennsylvania, on Tuesday, March 11, 2003, commencing at 5:23 p.m., before Mandy L. Betz, Registered Professional Reporter, and Joe Chapman, Videographer.

APPEARANCES:

SLOAN & FELDMAN
 By: ROBERT A. SLOAN, ESQ.
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 Philadelphia, Pennsylvania 19102
 -- For the Plaintiffs

FREY, PETRAKIS, DEEB, BLUM,
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1 (P-Mauthe Exhibit Numbers 1 and 2
 2 were marked for identification.)

3 (D-Mauthe Exhibit Numbers 1
 4 through 8 were marked for identification.)

5 THE VIDEOGRAPHER: My name is Joe
 6 Chapman, and I'm employed by Bill Heilman Video
 7 Services, Digital Justice, 500 Philadelphia Road,
 8 Easton, Pennsylvania. The current time is 5:23 p.m.
 9 And today's date is March 11th, 2003.

10 This deposition is being conducted
 11 at 127 South Fifth Street, Quakertown, Pennsylvania.
 12 The caption of this case is Lamar Haupt and Carol
 13 Haupt versus The Goodyear Tire & Rubber Company.
 14 The name of this witness is Dr. Robert Mauthe. This
 15 deposition is being taken on behalf of the plaintiff
 16 represented by Attorney Robert Sloan. Also present
 17 is Peter Deeb, attorney for the defendant. The
 18 court reporter, Mandy Betz, will swear in the
 19 witness.

20 * * *
 21 ROBERT W. MAUTHE, M.D., having
 22 been duly sworn, was examined and testified as
 23 follows:

* * *

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1	BY MR. SLOAN:
2	Q. Good afternoon, Dr. Mauthe.
3	A. Good afternoon.
4	Q. As you know, I'm Bob Sloan. I represent
5	Lamar Haupt and Carol Haupt in this case. And I
6	have a few questions for you today.
7	Doctor, first of all, before we
8	started the deposition we had a document marked
9	Exhibit P-Mauthe 1. Can you tell us what that is,
10	please?
11	A. It's my CV, which represents my
12	education and training.
13	Q. And CV stands for curriculum vitae?
14	A. Yes, sir.
15	Q. And is that also known as a resume?
16	A. Yes.
17	Q. Okay. Could you tell us, please, Dr.
18	Mauthe, what is your educational background?
19	A. I graduated from the College of William
20	and Mary in Williamsburg, Virginia, back in 1980. I
21	then completed my four years of medical school at
22	the Medical College of Virginia in Richmond,
23	Virginia, in 1985.
24	Q. And that was an M.D. degree that you
25	got?

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<p>1 Q. Doctor, in terms of what parts of his 2 body he was complaining of, was that pretty 3 consistent from one visit to the next? 4 A. Always on one spot on the left side of 5 his back for the most part. 6 Q. How about either of his legs? 7 A. It would shoot down the leg. But, 8 again, he -- he has this neuropathic problem in his 9 leg which made it complicated. The -- the pain down 10 the leg is -- is a referred phenomenon, it comes 11 from the back, but he also has a problem in the leg 12 from his neuropathy which is superimposed. 13 Q. Which leg are you talking about? 14 A. For him it's mostly always the left leg. 15 Q. So he had two separate problems in the 16 same leg? 17 A. Yes. And one pre-existed and one was 18 trauma-related. 19 Q. Okay. The trauma, you mean accident? 20 A. The accident of 7/20/00. 21 Now, I think when I first saw him 22 he was 238 pounds. By April of 2002 I had got him 23 down to 230. So at least we were going in the right 24 direction. 25 But his exam was really unchanged.</p>	<p>45</p> <p>1 At that point I said to him really, you know, you're 2 doing as well as I think you're going to do, you're 3 not going to have the surgery, I'm going to help you 4 learn to live with this, I want you to work, I want 5 you to lose weight, I want you to exercise. So I 6 changed him to the point where I was really only 7 seeing him every three months or so. 8 I saw him again in July of 2002, 9 again in October of 2002, and my most recent visit 10 being on January 29th of 2003. Nothing really 11 has -- has changed much. He's really having trouble 12 losing the weight. I have him really on only 13 over-the-counter medications at this time, ibuprofen 14 and Tylenol. I have him on a home program, and I 15 gave him permanent restrictions. And the only way I 16 think that anything's going to really change is if 17 he's able to just exercise and become more fit and 18 overcome what has happened. 19 Q. And, doctor, I'm sorry, the date of the 20 visit preceding the most recent visit of January 21 29th, 2002? 22 A. 10/14/02. 23 Q. Right. And then the last one was 24 January 29th, 2003? 25 A. Yes, sir.</p>
<p>1 Q. Okay. Thank you. 2 A. And that's where we are today. 3 Q. Doctor, in a moment I'm going to ask you 4 some professional opinion questions. I'll request, 5 please, doctor, that you -- to the extent that you 6 can, you base your answers to the opinion questions 7 on a reasonable degree of medical certainty even if 8 I forgot to put those magic words in each of my 9 questions. Is that agreeable? 10 A. Let me say that every opinion that I 11 will render today will be within reasonable degree 12 of medical certainty. 13 Q. And if you're unable to do that, you 14 will let us know? 15 A. I'll let you know. 16 Q. Thanks very much. Doctor, I'm also 17 going to give you a hypothetical which I will try to 18 move through as quickly as possible. The 19 hypothetical being a summary of what I expect Mr. 20 Haupt to testify to at trial. I'm at a bit of a 21 disadvantage since we're doing this videotape before 22 the start of the trial, so I don't know exactly word 23 for word what he will say at trial, but based on the 24 information I do have available, I'm going to try to 25 anticipate what -- what his testimony will be, at</p>	<p>47</p> <p>1 least in basic substance. Pardon me. 2 A. I'm sorry I can't be there live. I 3 just -- I have 25 patients to see a day and I 4 just -- I can't do it. 5 Q. I understand, doctor. In any event, it 6 will be hopefully the next best thing. Doctor, I'll 7 ask you to assume that Mr. Haupt will testify that 8 before July 20th, 2000 that he had experienced 9 episodes of back pain; that is, that he had back 10 pain but it was not constant, rather it came and 11 went. 12 MR. DEEB: Objection. 13 THE VIDEOGRAPHER: Off the video 14 at 6:14. 15 (The following discussion was held 16 off the video record.) 17 MR. DEEB: I'm going to object to 18 the rendering by counsel of what Mr. Haupt will 19 testify to given that he hasn't testified as Mr. 20 Sloan has noted. I think that Mr. Haupt has 21 presented the doctor with the factual background 22 necessary for his treatment and for the opinions 23 that he has. And providing him with a suspected 24 rendition of facts, what we don't know yet what 25 those facts are going to be from the time of trial,</p>

1 is unreasonable and not reliable and should not be
 2 permitted to go forward and be placed into evidence.
 3 That being said, we can go forward.

4 (Back on the video record.)
 5 THE VIDEOGRAPHER: Back on the
 6 video at 6:15.

7 BY MR. SLOAN:

8 Q. Now, Dr. Mauthe, I'll ask you to assume
 9 that he will also testify that before July 20th,
 10 2000, he -- he -- although he had leg symptoms, he
 11 did not have pain that went from his low back into
 12 his buttocks and down from the buttocks into the
 13 leg. The other symptoms that he had in his leg
 14 being electric shock sensation or burning or
 15 numbness, a tingling or a cold sensation. I believe
 16 he will also indicate when he testifies that he
 17 cannot recall missing time of any significance due
 18 to back problems before July 20th, 2000. He will
 19 also indicate, I believe, that -- that he -- before
 20 that date he was able to do the full range of his
 21 job duties as an over-the-road truck driver without
 22 a problem.

23 I believe he will also tell us
 24 about a motor vehicle accident that he was in on
 25 July 20th, 2000. Specifically, I believe he'll

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1 indicate that he was driving a tractor-trailer for
 2 his employer. He was down in Orlando, Florida. And
 3 at the time of the accident he was stopped at a red
 4 light. He will, I believe, indicate that he was
 5 rear-ended by a straight body truck, a Mack truck.
 6 I believe he will also indicate that -- that due to
 7 that impact there was damage to the rear of his
 8 trailer. There was also damage to the front of the
 9 Mack truck. And he will also indicate, I believe,
 10 that the seat back of his seat in -- in his tractor
 11 broke off upon impact, causing him to fall
 12 backwards.

13 I'll also ask you to assume that
 14 he will testify that because he was responsible for
 15 his truck and the load and also a return load that
 16 he had to pick up to bring back to Pennsylvania,
 17 that he basically held off on -- on getting
 18 treatment. It took him approximately a couple days
 19 or so to do what he had to do and get back to
 20 Pennsylvania.

21 I believe he'll indicate that he
 22 was in pain during that return trip from Florida to
 23 Pennsylvania and that once he got back, he
 24 immediately sought medical care from Gnaden Huetten,
 25 also known as Lehighton Hospital, on July 22nd,

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1 2000.

2 Doctor, I ask you to also assume
 3 that he will testify that following the July 22nd,
 4 2000 accident, that he perceives his back pain -- he
 5 felt his back pain was worse in a couple ways; that
 6 he had had some back pain before, but that now it
 7 was constant and also rather than episodic, or
 8 rather than coming in episodes, and also it was more
 9 severe. I believe he will also indicate that he had
 10 some new problems in his left leg, or he felt that
 11 he had, which were different than what he had
 12 before. I believe he'll indicate that he now felt
 13 that he had pain going from the left side of his low
 14 back traveling into the left buttock and then down
 15 into the leg.

16 I believe he will also testify
 17 that following the July 22nd, 2000 accident he did
 18 try a number of times to try and go back to being an
 19 over-the-road truck driver. And I also anticipate
 20 he'll tell us about the duties of that job. He'll
 21 indicate that it involved typically driving for many
 22 hours every day, up to as much as ten hours a day,
 23 which was a maximum amount that he would be allowed
 24 to drive. And it also involved nondriving work as
 25 well, again, different loads, different destinations

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1 required different things, but it consisted of those
 2 types of duties.

3 I believe he'll indicate that the
 4 job typically involved sitting for many hours at one
 5 time in the truck. And I believe he'll also
 6 indicate that, you know, on particular occasions
 7 when he had to get somewhere without delay, that he
 8 could sit sometimes as long as eight hours in the
 9 truck at one shot. I believe he'll indicate more
 10 typically he might spend as much as four hours at
 11 one time in the truck driving. I believe he'll also
 12 indicate that if he were to get out of the truck
 13 frequently, he wouldn't be able to get his job done
 14 on time.

15 I anticipate that he will testify
 16 that usually he did not have to actually handle the
 17 load, the merchandise that he was carrying in the
 18 truck, but that from time to time he did. And on
 19 those occasions he was required to do that as part
 20 of his job. I believe he'll tell us at least some
 21 examples of the types of things that from time to
 22 time he had to handle, and I believe they may
 23 include things such as bags of pet food weighing
 24 anywhere from approximately 30 to 50 pounds. And
 25 when he would have to do that, he might have to move

1 approximately 100 bags. I believe he'll indicate
 2 boxes of citrus and other produce that could weigh
 3 25 pounds, and he might have to move several hundred
 4 boxes on one occasion. He may indicate that he had
 5 to move cases of yogurt that might weigh about 20
 6 pounds, and he would have to move hundreds of those.
 7 I believe he'll indicate that sometimes he would
 8 have to move watermelons and -- and they might
 9 average about 10 pounds in weight, and he would have
 10 to move hundreds of those at one time, moving them
 11 from one place and stacking them elsewhere.

12 Doctor, I believe he'll also
 13 indicate that from time to time he had to move a
 14 pallet. That's a -- that's a wooden platform on
 15 which merchandise is stacked. And he would use a
 16 pallet jack, a hand pallet jack, to do that. It's a
 17 little device with a handle on it that would slip
 18 under that platform and he would pull on the device
 19 and it would in turn move the pallet. It's not
 20 motorized. And he would -- I believe he'll indicate
 21 that sometimes he would have to pull a load on a
 22 pallet that could weigh as much as approximately one
 23 ton.

24 Doctor, I believe he'll indicate
 25 that following the accident and being in and out of

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1 his truck driver work, that he finally stopped
 2 officially in April of 2001. I believe he'll
 3 indicate it was just too painful, and finally at
 4 that point in time he officially called it quits as
 5 a truck driver.

6 I believe he will testify that
 7 after that he did start a job as a security guard.
 8 I believe he'll indicate that -- that he continued
 9 to have pain while working in that job, but that he
 10 was able to handle the duties of that job. I
 11 believe he'll indicate that his assignments as a
 12 security guard would vary, depending on the
 13 assignment, he could be assigned to different
 14 locations, but that regardless of the assignment,
 15 that his work as a security guard does allow him to
 16 change position often, either going from sitting to
 17 standing or walking or going from standing and
 18 walking to sitting. And that he's able to make
 19 those changes in position even if the particular
 20 assignment happens to be foot patrol or another day
 21 happens to be a car patrol. Basically I believe
 22 he'll indicate that he's not stuck doing one thing
 23 for hours at a time. I believe he'll also indicate
 24 that there's not much lifting -- pardon me --
 25 involved in the job, the security guard job. Off

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1 the record one second, please.

2 THE VIDEOGRAPHER: Off the video
 3 at 6:22.

4 (Discussion held off the record.)
 5 (A brief recess was taken.)
 6 THE VIDEOGRAPHER: Back on the

7 video at 6:23.

8 BY MR. SLOAN:

9 Q. Dr. Mauthe, having said all that, do you
 10 have an opinion to a reasonable degree of medical
 11 certainty as to whether Mr. Haupt had any
 12 pre-existing condition as of July 20th, 2000, at
 13 least as regards his -- his back and his legs?

14 MR. DEEB: Objection.

15 THE VIDEOGRAPHER: Off the video
 16 at 6:24.

17 (The following discussion was held
 18 off the video record.)

19 MR. DEEB: I believe I've already
 20 objected to the reading of the assumed facts based
 21 upon the proposed testimony of Mr. Haupt. Obviously
 22 my objection continues, and I'm not going to
 23 continue to interrupt. But to the extent that you
 24 ask him for any opinion based upon that rendition of
 25 facts which you just presented, I object to it as

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1 being based upon evidence which is not reliable, not
 2 of record, and is not appropriate for the trial.

3 (Back on the video record.)

4 THE VIDEOGRAPHER: Back on the
 5 video at 6:24.

6 BY MR. SLOAN:

7 Q. Do you recall the question, doctor?
 8 A. Yes. And the answer is yes, I have an
 9 opinion.

10 Q. Could you tell us what that opinion is,
 11 please?

12 A. Yes. It's my opinion that Mr. Haupt has
 13 a pre-existing condition as it pertains to his
 14 lumbar spine, best described as an asymptomatic
 15 spondylolisthesis. I also believe he suffers from
 16 peripheral neuropathy, among other things not
 17 pertinent to today's discussion.

18 Q. And the -- when you say asymptomatic,
 19 did he have any discomfort or pain in his back
 20 before July 20th, 2000 from the spondylolisthesis?

21 A. When I looked at Dr. Diaz' records --
 22 and I don't know how many pages there are, maybe
 23 there's 20 pages -- there's about 50 entries,
 24 whether it's for his blood pressure or dizziness or
 25 a sore throat or peed too little or peed too much.

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1 There are a lot of entries. He goes to the doctor a
2 lot.

3 And I counted -- I don't remember
4 the exact number. Some were for the leg, some were
5 for the back, some were for both. And I think there
6 are about ten visits out of that 50 that he
7 complained of back pain and maybe about three or so
8 where he complained of leg pain. So, you know, this
9 problem pre-existed. And I think that there was
10 a -- you know, substantial evidence in terms of MR
11 and x-ray that showed he has this pre-existing
12 spondylolisthesis. However, it's my contention that
13 as of 7/20/00 there was an increase in his
14 pre-existing back pain such that the focus of his
15 medical care became for his back. So he increased
16 the frequency, increased the quality, increased in
17 character of his complaints, sought additional
18 medical consultation.

19 As far as I know, no one ever
20 talked to Mr. Haupt about having spine surgery
21 before, despite the fact that this pre-existed. So
22 I think that there was -- there was a change in the
23 quality and the character of the complaints, an
24 increase in the medical services, which led to an
25 aggra -- which is best summarized by saying he

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1 leg.

2 THE WITNESS: Three.

3 MR. DEEB: Whatever. You stated
4 five, but it may be three. I have no idea. In
5 other words, ten is an inappropriate representation
6 as to the testimony prior given. We can go back on
7 the record when Mr. Sloan is ready.

8 (Back on the video record.)

9 THE VIDEOGRAPHER: And back on the
10 video at 6:28.

11 BY MR. SLOAN:

12 Q. Doctor, you indicated -- and I may have
13 misquoted you on that, but you indicated that there
14 were approximately 50 visits. And out of those,
15 there were a certain number of visits where there
16 were complaints of back complaints or some leg
17 complaints. Rather than misstate what you said,
18 I'll just leave the record as it is. But those --
19 those visits that you're talking about, the 50 are
20 spread out over what time frame?

21 A. From 1982, so it will be 20 years. I
22 think I said ten years.

23 Q. So if we substitute 2000 would it be 18?
24 A. About 2001, yes. You can't hold me to
25 ten. I counted before we sat down here today. And

1 aggravated this pre-existing condition which became
2 turned from -- I think the best way to say is he
3 went from episodic to continuous, from nonimpairing
4 to impairing.

5 Q. Doctor, and those 50 visits with maybe
6 ten where there's references to the back and/or the
7 leg, those are spread out over a period of how many
8 years?

9 A. Ten.

10 MR. DEEB: Objection.

11 THE VIDEOGRAPHER: Off the video
12 at --

13 A. Twenty years. Sorry. Go ahead. I'll
14 wait.

15 Q. From 1982 to 2000?

16 MR. DEEB: Are we off the record?
17 THE VIDEOGRAPHER: Off the video
18 at 6:27.

19 (The following discussion was held
20 off the video record.)

21 MR. DEEB: The nature of my
22 objection is that Mr. Sloan indicated that there
23 were ten that were related to the back and/or the
24 leg, whereas I understood the testimony to be ten
25 relating to the back and five or so relating to the

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1 I -- but I may have missed one or two.

2 Q. That's close, ball park?

3 A. Close. You got to give me a little
4 standard deviation of error there.

5 Q. I'm mainly interested, doctor, in the
6 ones that go from the time he first sees Dr. Diaz
7 until July -- well, until -- up until the time of
8 the accident. Is that the time frame that those are
9 in?

10 A. Yes, sir. It's occasional.

11 Q. Okay. Now, doctor, you may have
12 partially anticipated my next question. But do you
13 have an opinion to a reasonable degree of medical
14 certainty as to what effect, if any, the July 20th,
15 2000 motor vehicle accident had on Mr. Haupt's
16 pre-existing condition?

17 A. Yes, I have an opinion.

18 Q. Your opinion, please.

19 A. And it's my opinion within reasonable
20 medical certainty that the forces involved in the
21 trauma sustained on 7/20/00 caused a previously
22 fairly quiescent spondylolisthesis to become
23 continuously symptomatic, which precluded his
24 ability to return to his previous level of
25 employment and, in fact, had him see a surgeon who

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1 offered him a stabilization procedure.

2 Q. Again, doctor, you may have partially
3 anticipated my question. But do you have an opinion
4 to a reasonable degree of medical certainty as to
5 what symptoms, if any, Mr. Haupt suffers from that
6 aggravation of his pre-existing spondylolisthesis?

7 A. The symptoms are what the patient
8 complains of. And with Mr. Haupt it's increased
9 back pain; frequency in character; difficulty
10 sitting, standing, walking or bending to any
11 significant degree; and the pain that shoots down
12 the left leg on occasion. Although, there is an
13 overlap with his neuropathy, which is more of a
14 shooting, lightning needle-like sensation as opposed
15 to the deep achy referred pain through the buttock
16 and down the leg.

17 Q. Okay. And which is the one that you
18 believe is from the aggravation?

19 A. More of the dull, achy, buttock leg.
20 Anything that has to do -- when he uses words like
21 pins and needles or shocks, that's the neuropathy.

22 Q. Dr. Mauthe, do you have an opinion to a
23 reasonable degree of medical certainty as to whether
24 Mr. Haupt needs any limitations on work and other
25 physical activities?

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1 or hour and a half we've been sitting here.

2 Q. Well, we could get up if you need to.

3 A. Well, I've gotten up once or twice.

4 Q. If you need to, you'll let us know,
5 right?

6 A. Right.

7 Q. Okay. Doctor, would you impose any
8 limit upon him in terms of, say, the total amount of
9 sitting, if we added it all up in an eight-hour
10 workday?

11 A. I would limit him to about half of the
12 day, so four hours out of eight hours he could sit
13 provided he changed position every half hour or so.

14 Q. Doctor, would you place any limits upon
15 him in terms of driving?

16 A. Again, the same with sitting, 30 minutes
17 at a time. I mean, and that's not an absolute.
18 It's a guide or a ball park.

19 Q. And also --

20 A. Total of four hours.

21 Q. Okay. Doctor, you mentioned excess
22 lifting. Do you have any more specific
23 recommendation in terms of number of pounds?

24 A. When I say light duty, I don't want a
25 lot of lifting involved so that there's no force

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1 A. Yes, I do.

2 Q. Your opinion, please.

3 A. And it's my opinion within reasonable
4 medical certainty that Mr. Haupt should be relegated
5 to light duty type work. That is because if there
6 is excess sitting, excess bending, or excess
7 lifting, there will be increased amount of force
8 transmitted to the spine, increasing pain. May
9 force Mr. Haupt to decide to undergo the surgery
10 which I'm trying to avoid. And so I give him
11 limitations to avoid hurting himself, pushing him
12 into surgery, and I don't allow him to go back into
13 his truck driving job.

14 Q. Doctor, let me go over that a little bit
15 with you. When you said excess sitting, for
16 example, how much would you allow him to sit at one
17 time?

18 A. Thirty minutes at a time. What happens
19 is when you sit, there's pressure on the spine. So
20 we recommend -- or I recommend to my patients they
21 need to change positions frequently. And we usually
22 use about a half hour as the sitting tolerance
23 time --

24 Q. Doctor, would you impose --

25 A. -- as opposed to the almost two hours --

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1 transmitted to the spine. Ten pounds is pretty
2 negligible, so he can lift that all he wants, but I
3 wouldn't let him lift more than 20 pounds except on
4 an occasional basis, meaning about a third of his
5 day.

6 Q. How about bending?

7 A. Limit to occasionally.

8 Q. Doctor, what about -- about walking?

9 A. Well, walking is actually therapeutic
10 for him. As a matter of fact, that's part of what I
11 have him on is a 30-minute walking program once or
12 twice a day. So I think that that's therapeutic,
13 but, again, I don't know how long he could sustain
14 it for. So we're going to keep most activities
15 involved to about 30 minutes at a time.

16 Q. How do you feel about standing in one
17 place as compared with walking?

18 A. Standing in one place is tough for
19 anybody without shifting around, but, again, you
20 know, 30 minutes is fine.

21 Q. Well, is it any tougher for him than for
22 people that don't have his problems?

23 A. I think it's hard for anybody to stand
24 in one place for a long period of time. Anybody
25 who's ever been to Disney World knows that. But,

<p>65</p> <p>1 you know, with the spondylolisthesis, the muscles go 2 into spasm, makes it more difficult.</p> <p>3 Q. Now, doctor, do you have an opinion as 4 to whether he can work within these limits, or can 5 do a job as long as he stays within these limits?</p> <p>6 A. Well, what I do is I determine medical 7 impairments. Keeping in mind, of course, that 8 disability is not a medical determination, it's 9 actually a legal one. And, you know, everybody 10 interprets pain differently. So I can't guarantee 11 that he's going to be without pain. But what I can 12 tell you is that with that diagnosis, he is safe to 13 work within the limitations I have specified. It 14 doesn't mean he's not going to have discomfort, but 15 I think it's reasonable.</p> <p>16 Q. Okay. And, doctor, do you have an 17 opinion to a reasonable degree of medical certainty 18 as to whether these limitations that you've 19 recommended are permanent?</p> <p>20 A. Yes. It's my opinion within reasonable 21 medical certainty that they are permanent based on 22 the significant amount of time this has persisted 23 without letting up.</p> <p>24 Q. Doctor, do you have an opinion as to 25 whether these limitations are the result of the</p>	<p>66</p> <p>1 aggravation of his pre-existing condition by the 2 July 20th, 2000 motor vehicle accident?</p> <p>3 A. Yes. It's my opinion that the 4 limitations we've just discussed are a direct result 5 of the accident sustained on 7/20/00 and the ensuing 6 aggravation of his pre-existing lumbar 7 spondylolisthesis.</p> <p>8 Q. In your opinion, did he need any such 9 limits before the accident?</p> <p>10 A. To my knowledge, although he had some 11 occasional back pain, I never saw any physician 12 impose any limitations. There are no reason -- 13 there is no reason to impose limitations on an 14 asymptomatic spondylolisthesis.</p> <p>15 Q. Doctor, do you have an opinion to a 16 reasonable degree of medical certainty as to whether 17 Mr. Haupt is able to do the full range of his duties 18 as an over-the-road truck driver?</p> <p>19 A. It's my opinion within reasonable 20 medical certainty that he's unable to return to his 21 former occupation as a full-time, over-the-road 22 tractor-trailer driver due to the fact of the 23 prolonged sitting involved, sometimes obtaining that 24 crouched, bent-over posture, the lifting which was 25 occasionally involved in his job which may be in</p>
<p>67</p> <p>1 excess of his limitations. So therefore, I don't 2 believe it's appropriate for him to return.</p> <p>3 And the other concern I have is he 4 gets these spasms in his back. And I have to not 5 only be concerned for Mr. Haupt but the other people 6 on the road. And I honestly don't think he's safe 7 to operate a vehicle like -- like a tractor-trailer. 8 Certainly a car is okay.</p> <p>9 Q. Doctor, do you have an opinion as to 10 whether that inability to do his old job as an 11 over-the-road truck driver is the result of the 12 aggravation by the July 2000 motor vehicle accident?</p> <p>13 A. Yes. It's my opinion that his inability 14 to return to his previous -- previous occupation as 15 an over-the-road tractor-trailer driver is a direct 16 result of the trauma sustained on 7/20/00 and the 17 aggravation of his spondylolisthesis.</p> <p>18 Q. Doctor, I believe we may hear some 19 testimony at trial about Mr. Haupt's having explored 20 the possibility of working as a -- at a job called a 21 yard jockey. Have you heard of that job?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And do you understand that to be 24 driving a tractor and moving trailers around in a -- 25 in a yard?</p>	<p>68</p> <p>1 A. That's the majority of it, but you also 2 have to -- depending on whether you're assigned to 3 hook up the trailers, you may have to work with the 4 jacks, the cranks as they call them, pulling the 5 pins.</p> <p>6 Q. And, doctor, would you want Mr. Haupt to 7 be cranking, say, the landing gear I believe there 8 will be testimony or pulling pins?</p> <p>9 A. Is that what they call it, landing gear? 10 I think it would require excess force, a bent-over 11 flexed posture for a prolonged period of time, and 12 therefore would not probably be appropriate -- would 13 not be appropriate within reasonable medical 14 certainty for Mr. Haupt.</p> <p>15 Q. Doctor, do you have an opinion as to 16 whether the aggravation of Mr. Haupt's pre-existing 17 condition caused by the motor vehicle accident is a 18 substantial contributing factor to his symptoms and 19 limitations?</p> <p>20 MR. DEEB: Objection. 21 THE VIDEOGRAPHER: Off the video 22 at 6:37. 23 (The following discussion was held 24 off the video record.) 25 MR. DEEB: Objection to the form</p>

1 as leading the witness. I've let a number of
 2 leading questions go because the opinions are
 3 already well of record, but now it's starting to
 4 push beyond the reasonableness level, I believe.
 5 You can go back on the record.

6 (Back on the video record.)

7 THE VIDEOGRAPHER: Back on the
 8 video at 6:37.

9 BY MR. SLOAN:

10 Q. You can answer, doctor.

11 A. The answer is yes. It's my opinion
 12 within reasonable medical certainty that the trauma
 13 sustained on 7/20/00, when he aggravated his
 14 pre-existing spondylolisthesis, was the substantial
 15 and material contributing factor which led to the
 16 back pain, inability to return to work, and his
 17 limitations in his usual and customary and daily
 18 life activities.

19 Q. Dr. Mauthe, what is a prognosis?

20 A. It's a guess for the future.

21 Q. And can you render a prognosis based
 22 upon reasonable medical certainty?

23 A. Yes. It's my opinion within reasonable
 24 medical certainty that his prognosis is for
 25 continued pain. The fairly quiescent

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1 spondylolisthesis has become constantly painful, and
 2 I foresee it to be painful into the future.

3 Q. Do you believe it's permanent?

4 A. Yes, sir.

5 Q. Doctor, do you believe that the security
 6 guard job is appropriate for him?

7 A. I think it's not only appropriate, I
 8 think it's therapeutic, yes.

9 Q. Doctor, do you have an opinion as to
 10 whether the treatment that Mr. Haupt has received
 11 for the aggravation of his condition by the motor
 12 vehicle accident -- and by treatment I include the
 13 treatment you've given him as well as the treatment
 14 rendered by other health care providers -- do you
 15 have an opinion about whether that treatment is
 16 reasonable and necessary?

17 A. Yes.

18 Q. And your opinion, please.

19 A. It's my opinion within reasonable
 20 medical certainty, based on my years of training and
 21 experience in treating many patients with this same
 22 problem, that the care he has received has been both
 23 reasonable and necessary for the injury sustained on
 24 7/20/00.

25 Q. Now, doctor, do you have a -- a record

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1 of your charges for your own treatment of Mr. Haupt?

2 A. Yes.

3 Q. And can you tell us what the total is?

4 A. Maybe. I asked them to print it out
 5 ahead of time before we came in. I certainly have
 6 never looked at it. Total charges from my care
 7 was -- it looks like \$1,239.88.

8 Q. And, doctor, are those charges for the
 9 services that you gave to Mr. Haupt, are those the
 10 charges that are -- do you believe those charges are
 11 fair and reasonable and those that are customary?

12 A. Well, in my field they're all regulated.
 13 For example, although we charge, you know, a certain
 14 amount, we only receive what's approved by the --
 15 the fee schedule. So I think they're reasonable and
 16 necessary, yes.

17 MR. SLOAN: Okay. Let's go off
 18 the record for one second, please.

19 THE VIDEOGRAPHER: Off the video
 20 at 6:40.

21 (Discussion held off the record.)

22 (The following discussion was held
 23 off the video record.)

24 MR. SLOAN: I believe we have a
 25 stipulation, Mr. Deeb, that it's agreed that whether

1 or not the charges, Dr. Mauthe's charges or other
 2 physicians' charges, are admissible will be
 3 determined at a later time, so that the objection to
 4 that is preserved. Also, the issue of whether or
 5 not the treatment that Mr. Haupt received is or is
 6 not related to the July 2000 accident will also be,
 7 of course, a question that will be answered later,
 8 most likely by the jury. But do we have an
 9 agreement that the charges of the various health
 10 care providers, including Dr. Mauthe, are fair,
 11 reasonable, and customary?

12 MR. DEEB: Correct.

13 MR. SLOAN: And we're agreeing
 14 that we're not going to object based on authenticity
 15 of medical records?

16 MR. DEEB: That's correct. I
 17 don't see any situation where I have a problem with
 18 authenticity at the moment.

19 MR. SLOAN: Thank you.

20 (Back on the video record.)

21 THE VIDEOGRAPHER: Back on the

22 video at 6:42.

23 BY MR. SLOAN:

24 Q. Dr. Mauthe, do you have an opinion to a
 25 reasonable degree of medical certainty as to whether

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<p>1 Mr. Haupt as a result of the July 20th, 2000 2 accident has suffered a significant and permanent 3 loss of an important bodily function?</p> <p>4 A. Yes, I have an opinion.</p> <p>5 Q. And your opinion, please.</p> <p>6 A. That he has, within a reasonable degree 7 of medical certainty, lost significant important 8 bodily function, and that is to say, the ability to 9 sit, participate in full and unrestricted 10 employment, lift, and bend. So therefore, the 11 accident did take a piece away that he no longer 12 has.</p> <p>13 Q. And, doctor, it may be a silly question, 14 but do the limitations that you recommended apply to 15 activities other than work, such as home activities?</p> <p>16 A. Well, certainly. I think they apply in 17 both cases. He has limitations in bending, lifting, 18 sitting, standing, and walking.</p> <p>19 Q. Doctor, another hypothetical. I'll ask 20 you to assume that when Mr. Haupt testifies he will 21 indicate that before the July 20th, 2000 motor 22 vehicle accident he engaged in activities outside of 23 work such as helping with housecleaning; 24 specifically, he would move the furniture. I 25 believe he'll indicate he shoveled snow, mowed the</p>	<p>73</p> <p>1 grass, trimmed shrubs, washed and -- and provided 2 limited service on his vehicles, engaged in limited 3 carpentry, plumbing, and electric work around his 4 house. He did some domestic chores. And I believe 5 he'll indicate that he would spend approximately, on 6 the average, anyway, about five hours a week 7 performing such services.</p> <p>8 I believe he will also indicate 9 that after the July 20th, 2000 motor vehicle 10 accident, due to the physical problems that he's had 11 since the accident, he still engages in those -- 12 such tasks, but that he can only do it for 13 approximately one to two hours per week.</p> <p>14 Doctor, do you have an opinion to 15 a reasonable degree of medical certainty as to -- 16 assuming he testifies in that manner, whether the -- 17 that reduction in hours is consistent with his 18 medical condition as you know it?</p> <p>19 MR. DEEB: Objection.</p> <p>20 THE VIDEOGRAPHER: Off the video 21 at 6:45.</p> <p>22 (The following discussion was held 23 off the video record.)</p> <p>24 MR. DEEB: Again I object to the 25 hypothetical which poses the proposed testimony of</p>
<p>75</p> <p>1 Mr. Haupt as opposed to the actual testimony or 2 actual information that has been provided to the 3 doctor. And I -- note my continuing objection to 4 any opinion the doctor offers as a result of that 5 hypothetical.</p> <p>6 (Back on the video record.)</p> <p>7 THE VIDEOGRAPHER: Back on the 8 video at 6:46.</p> <p>9 THE WITNESS: Yes. It's my 10 opinion that he will have limitations in terms of 11 his activities of daily living just as he would have 12 in terms of work as you have described them. And 13 that is as a direct result of the trauma sustained 14 on 7/20/00.</p> <p>15 BY MR. SLOAN:</p> <p>16 Q. Dr. Mauthe, I want to explore a little 17 bit your thinking that you expressed. Mr. Haupt had 18 some back pain before his July 20th, 2000 motor 19 vehicle accident. How is it that you can say that 20 it's different afterwards?</p> <p>21 A. Well, I didn't know Mr. Haupt before. I 22 only met him after this event occurred. I think 23 what you do is when you're going to render opinions 24 like this, you look at the -- look at the facts of 25 the case, look at how often he was seen for back</p>	<p>76</p> <p>1 pain before, look at the diagnostic testing, and 2 look and see if there's what's called a temporal 3 relationship; in other words, did he seek medical 4 care months after this event occurred or was it 5 promptly, within a reasonable period of time.</p> <p>6 And I think the fact that he drove 7 his truck back and was then seen in an emergency 8 room two days later and then the family doctor two 9 days later and has been continuously symptomatic 10 since as opposed to in the past when he was just 11 occasionally symptomatic shows that there is what's 12 called a temporal relationship.</p> <p>13 The second form of causation or 14 analytical thinking involve what's called 15 biomechanics. And although I'm not an engineer, in 16 medicine when we have a bony defect, we call it 17 sometimes an accident waiting to happen. I mean, 18 sometimes these traumas do occur to pre-existing 19 conditions and cause them to become symptomatic and 20 cause them to be more severe, such that if they 21 weren't there, maybe the trauma would not have 22 resulted in pain. And when you're struck from the 23 rear and the body is forced, depending on how the 24 actual mechanics occurred, it's reasonable to 25 aggravate that type of -- of -- of spine condition.</p>

1 So I think given the fact that
 2 there's a temporal onset, you know, he sought
 3 medical care afterwards within a reasonable period
 4 of time, the biomechanics of the injury make sense,
 5 and he's been continuously symptomatic since, I
 6 think that's how you explain it.

7 Q. And, doctor --

8 A. And the bottom line is, though, you
 9 either believe somebody or you don't. You know, I
 10 have no reason to doubt. I don't question pain.
 11 Pain is always subjective. My job is to determine
 12 if there's an impairment present. And I think after
 13 all we've been going through for almost two hours
 14 now, there's sufficient evidence to indicate he has
 15 a significant medical impairment limiting one's life
 16 daily activities.

17 Q. Doctor, you told us about the frequency
 18 of treatment before the accident and you referenced
 19 Dr. Diaz's records. Is the treatment that he got
 20 since the accident for his back, has that been with
 21 the same frequency or different frequency?

22 A. Well, he never had injections before,
 23 never saw a surgeon before, never saw a physiatrist
 24 or a specialist that I know of, so I think there's
 25 been a significant change.

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1 Q. And what effect, if any, does that have
 2 on your opinion that he aggravated his back in that
 3 accident?

4 A. Well, I think it all goes into the --
 5 the big picture. You have to look at each item
 6 individually and see how it fits.

7 Q. Dr. Mauthe, in terms of what was seen on
 8 the films before and after the accident, is there
 9 any noticeable anatomic change comparing the films
 10 before and after?

11 A. Well, the reports themselves didn't
 12 really shed any light into that. I looked at them
 13 myself. Now, I don't have this MRI from '98, so I
 14 can't compare an MRI in '98 to the one in 2000. But
 15 it's not uncommon for there not to actually be a
 16 structural change. For example, it's very rare for
 17 someone to go from a grade one to a grade two. It
 18 happens. But usually they just become symptomatic.
 19 That's I think what happened here.

20 Q. And you can have that -- becoming
 21 symptomatic even in the absence of noticeable
 22 anatomic change on films?

23 MR. DEEB: Objection.

24 THE VIDEOGRAPHER: Off the video
 25 at 6:50.

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1 (The following discussion was held
 2 off the video record.)

3 MR. DEEB: The question is
 4 leading.

5 (Back on the video record.)

6 THE VIDEOGRAPHER: Back on the
 7 video at 6:50.

8 MR. SLOAN: Strike that question.

9 BY MR. SLOAN:

10 Q. Doctor, let me ask you a different
 11 question. Does -- does the fact that there's no
 12 anatomical change seen looking at the early films
 13 with the post accident films, does that negate your
 14 opinion that he aggravated his back?

15 A. When you look at diagnostic studies, you
 16 have to understand there are limitations. And that
 17 has to do with what's called sensitivity. We're
 18 looking at x-rays and MRI scans that aren't perfect,
 19 and it's very hard to detect subtle changes. So
 20 it's not unusual at all for there not to be any
 21 significant changes on the x-rays or MRIs. So that
 22 doesn't change any of my opinions.

23 Q. Doctor, does the fact that Mr. Haupt
 24 spent two days traveling from Florida to
 25 Pennsylvania before going for treatment, does that

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1 have any effect on your opinions?

2 A. No. I think most people try to give
 3 something time to resolve and see if it goes away.
 4 He also had a job to do. He had to get his truck
 5 back. I'm more concerned with the people that, you
 6 know, rush to doctors when something happens. He
 7 gave it a period of time and it didn't resolve.

8 Q. And, doctor, do you have an opinion as
 9 to whether Mr. Haupt's going in and out of work from
 10 the time of the accident until he officially left
 11 truck driving in April 2001, whether his absences
 12 from work due to these problems was medically
 13 appropriate?

14 A. I didn't treat him during that period of
 15 time, so I don't really know what his condition
 16 was -- was other than to read the records of
 17 doctors. But I think it's reasonable to try it. I
 18 mean, how do you know if you can do it until you
 19 try. So I think, again, it goes to a credibility
 20 factor.

21 Q. It was reasonable also to have to take
 22 some time off during that time period from truck
 23 driving?

24 A. Well, again, I didn't -- I didn't know
 25 what he was like back then. So we'll have to defer

1 to the medical records in that time period, if he
 2 hurt as bad as he said he did and he couldn't do the
 3 job and he felt unsafe. I mean, this is not
 4 somebody who's sitting in a shop all day. You're
 5 driving a very heavy vehicle with other peoples'
 6 lives at stake. So I'll have to defer to his
 7 judgment during that period of time.

8 Q. Well, assuming, doctor, that the jury
 9 were to believe his testimony and assuming he
 10 testifies that during that time period it was
 11 painful, such that he sometimes had to leave work,
 12 would that be consistent with your knowledge of his
 13 medical condition based on your review of the
 14 earlier records?

15 MR. DEEB: Objection.

16 THE VIDEOGRAPHER: Off the video
 17 at 6:52.

18 (The following discussion was held
 19 off the video record.)

20 MR. DEEB: Objection. The
 21 question poses a hypothetical which is not yet in
 22 evidence and the assumption that the jury believes
 23 the testimony which is not yet in evidence, both of
 24 which are improper foundations for the question
 25 being asked the doctor at this time.

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1 (Back on the video record.)

2 THE VIDEOGRAPHER: Back on the
 3 video at 6:53.

4 THE WITNESS: Yes. I think it was
 5 reasonable for him to miss some time from work based
 6 upon his severe complaints of pain.

7 BY MR. SLOAN:

8 Q. Now, doctor, do you have an opinion as
 9 to whether it -- it can be said that without that
 10 motor vehicle accident his spondylolisthesis would
 11 have ended his truck driving job prematurely anyway;
 12 and by prematurely, I mean before age 65?

13 A. We'll never know the answer to that
 14 question. Something else could have happened.
 15 People get hurt at home. They're not just in car
 16 accidents. So I'll never be able to say. It looked
 17 like he was going along pretty well. He had it
 18 since '89 and he hadn't lost any time from work, so
 19 it looked like it wasn't a problem then. So I think
 20 based on if you look at the past, he would have
 21 continued to work into the future.

22 Q. And, doctor, do you have an opinion as
 23 to whether it can be said that either his weight or
 24 his other medical problems, the ones you mentioned
 25 he went to Dr. Diaz for, whether those factors would

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1 have ended his truck driving career before age 65?

2 MR. DEEB: Objection.

3 THE VIDEOGRAPHER: Off the video
 4 at 6:54.

5 (The following discussion was held
 6 off the video record.)

7 MR. DEEB: Objection as to the
 8 scope, as this being beyond the scope of his
 9 testimony and being beyond the scope of his
 10 expertise.

11 (Back on the video record.)

12 THE VIDEOGRAPHER: Back on the
 13 video at 6:54.

14 THE WITNESS: Again, certainly
 15 anything can happen. I mean, he could have had a
 16 heart attack. He could have had a stroke. So
 17 anything could have terminated his -- his truck
 18 driving ahead of time. We'll never know the answer
 19 to that. Those are certainly risk factors. But,
 20 again, he was working along just fine.

21 BY MR. SLOAN:

22 Q. Dr. Mauthe, did you have the opportunity
 23 to review a report from Dr. Resnick, Edward Resnick?

24 A. Yes.

25 Q. And was that a report dated December

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1 10th, 2002?

2 A. Yes.

3 Q. Do you have that report handy, doctor?

4 A. Yes.

5 Q. Okay. And at whose request was Mr.
 6 Haupt evaluated by Dr. Resnick?

7 A. I believe it would be Attorney Deeb's
 8 office.

9 Q. And, doctor, do you have any areas of
 10 agreement or disagreement with the opinions of Dr.
 11 Resnick as stated in that report?

12 A. Well, I would say we both looked at the
 13 same records. And I think the only real point that
 14 we would disagree on is that he said that this man
 15 has had many episodes of low back pain. I don't
 16 know if 10 or so episodes in 20 some odd years or
 17 maybe 18 years is -- is many.

18 I think we can certainly agree
 19 that the spondylolisthesis was pre-existing. And he
 20 indicated that he thought the accident caused a soft
 21 tissue injury. My only point would be that soft
 22 tissue injuries usually resolve within three to six
 23 months, whereas this did not. So I think his
 24 current episodes of pain and his impairment, his
 25 inability to return to work is a direct result of

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 1 that aggravation of that spondylolisthesis, where
 2 you tip the scales in the other direction and it
 3 just makes itself that they can't tolerate it.
 4 Q. And, Dr. Mauthe, again, I assume that
 5 Dr. Resnick will testify as to opinions in his
 6 report. Do you agree with his opinion regarding the
 7 neuropathy being the cause of the symptoms in Mr.
 8 Haupt's leg, assuming that he meant that that's 100
 9 percent of the cause of the symptoms in the leg?
 10 A. Well, he clearly had left leg symptoms
 11 before of a shock-like neuropathic quality and they
 12 pre-existed, but the more constant radiation through
 13 the buttock and down the back is fairly classic with
 14 spondylolisthesis. So I think there's a
 15 contribution from both at this time.
 16 Q. Now, doctor, is there any other doctor
 17 who evaluated Mr. Haupt for legal reasons, that is,
 18 for -- for reasons other than treatment besides Dr.
 19 Resnick?
 20 A. Well, we talked about Dr. Wukich earlier
 21 today.
 22 Q. Okay. And at whose request was Mr.
 23 Haupt evaluated by Dr. Wukich?
 24 A. I think it was his employer.
 25 MR. DEEB: Objection.

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 1 THE VIDEOGRAPHER: Off the video
 2 at 6:58.
 3 (The following discussion was held
 4 off the video record.)
 5 MR. DEEB: The employer is not a
 6 party to this case. The retention of his expert and
 7 his testimony and anything with regard to what he
 8 determined is thereby not relevant and not
 9 appropriate to be admitted into evidence, either the
 10 existence or the results of the examination or any
 11 opinions based thereon.
 12 MR. SLOAN: Again, I think that,
 13 nonetheless, inference can be drawn from that, so I
 14 think it is probative.
 15 (Back on the video record.)
 16 THE VIDEOGRAPHER: Back on the
 17 video at 6:58.
 18 BY MR. SLOAN:
 19 Q. Dr. Mauthe, it seems like a long time
 20 ago when I told you I was going to ask you some
 21 opinion questions and I asked you to base your
 22 answers on your own knowledge of Mr. Haupt, your
 23 review of the records, and the hypotheticals that I
 24 would give you. If, doctor, I were to ask you now
 25 to give answers to the very same opinion questions

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 1 but only base your answers on your own knowledge of
 2 him and -- and your knowledge from the records and
 3 to -- to disregard the hypotheticals, would your
 4 answers to the opinion questions be the same?
 5 A. Yes.
 6 MR. DEEB: Objection.
 7 THE VIDEOGRAPHER: Off the video
 8 at 6:59.
 9 (The following discussion was held
 10 off the video record.)
 11 MR. DEEB: I think it's impossible
 12 to ask the doctor to give his opinion now based upon
 13 the way the hypotheticals were intertwined into the
 14 questions that were asked him previously. That
 15 being said, obviously the doctor can answer the
 16 question.
 17 (Back on the video record.)
 18 THE VIDEOGRAPHER: And we are back
 19 on the video at 6:59.
 20 THE WITNESS: Yes.
 21 BY MR. SLOAN:
 22 Q. That's your answer?
 23 A. That's correct.
 24 Q. Doctor, one last question, at least from
 25 me. Have all the opinions that you've rendered here

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 1 today been based upon a reasonable degree of medical
 2 certainty?
 3 A. Yes.
 4 MR. SLOAN: Dr. Mauthe, thank you
 5 very much. I will stop torturing you, but I'm sure
 6 Mr. Deeb has a few questions for you.
 7 THE WITNESS: Thank you.
 8 * * *
 9 CROSS-EXAMINATION
 10 BY MR. DEEB:
 11 Q. Hello, doctor.
 12 A. Yes, sir.
 13 Q. As -- as you're aware, my name is Peter
 14 Deeb, and I represent the defendant in this matter,
 15 Goodyear Tire & Rubber Company. I have a number of
 16 exhibits that have been premarked by the court
 17 reporter which I'll put here for the occasion in
 18 which we may have to refer to them during some of
 19 the questions that I have to ask you.
 20 Doctor, you're here today
 21 testifying on behalf of Mr. Haupt, correct?
 22 A. He's my patient, yes.
 23 Q. And I imagine, given your practice, that
 24 you regularly testify on behalf of injured
 25 plaintiffs in legal actions?